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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,551	09/10/2003	Patrick L. Kurzeja	60,130-1839; 03MRA0243	3098

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EXAMINER

BINDA, GREGORY JOHN

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

Application No.

10/659,551

Applicant(s)

KURZEJA, PATRICK L.

Examiner

Greg Binda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-11 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |



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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Drawings*

2. The replacement drawings filed December 21, 2004 are objected to as failing to comply with:
  - a. 37 CFR 1.84(p)(4) because in Fig. 3 the male yoke is identified by numeral 50 (see page 3, line 8) but in Figs. 3 & 5 the male yoke is also identified by the numeral 100 (see the paragraph inserted between paragraphs 19 & 20).
  - b. 37 CFR 1.84(p)(5) because Fig. 4 includes the reference character 52 which is not mentioned in the description.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.



*Specification*

4. The disclosure is objected to because:

- a. The new paragraph inserted between paragraphs 19 & 20 begins with “beveled edge 56” but the beveled edge was previously identified (see paragraph 18) by numeral 66.
- b. The word “male” is misspelled in the paragraph inserted between paragraphs 19 & 20.
- c. The subscript for what is presumably reference character L2 in paragraph 20 is obscured by underlining.

5. A substitute specification excluding the claims is required pursuant to 37 CFR 1.125(a) because numerous corrections and correction to “corrections” made to the original specification. Along with the substitute specification, applicant must include in attached remarks the statement as to lack of new matter under 37 CFR 1.125(b).

A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification



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contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

*Claim Objections*

6. Claims 6 & 11 are objected to because:

- a. Claim 6, lines 5-7 the limitations beginning with “said configurable segment . . .” should be included in the preceding paragraph (the one in lines 3 & 4).
- b. Claim 11, lines 5-7 same as above.

*Claim Rejections - 35 USC § 112*

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1, 3-6, 8-11 & 13-18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 6 & 11 recite the conditional term “optional”. Thus the limitations that succeed the term are premised on a condition which may or may not exist. Therefore those limitations are indefinitely recited making the claim indefinite and ambiguous

*Claim Rejections - 35 USC § 102*

9. Claims 1, 3, 5, 6, 8, 10, 11, 13 & 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mangas et al, US 5,716,276.



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- a. Claims 1, 3 & 5. Fig. 3 shows a configurable driveshaft assembly 100 comprising: a male component 10 (see also Fig. 1); a female component 110, 116, 118 in engagement with the male component, the female component comprising a tubular configurable segment 116 between a female yoke 118 and a receptacle member 110, the length of the configurable segment 116 is part of the overall length of the driveshaft assembly; and a seal 124 received at one end of the female component, and the male component 10 having a yoke 18, 20 and a stem 26 extending from the yoke into the female component, the seal 124 sealing an outer peripheral surface of the stem.
- b. Claims 6, 8 & 10. Fig. 3 shows a drivetrain assembly comprising: first axle 102; an interaxle driveshaft 100 connected to the first axle, the interaxle driveshaft comprising a tubular configurable segment 116 between a female yoke 118 and a receptacle member 110, the length of the configurable segment 116 is part of the overall length of the driveshaft assembly; a second axle 104 connected to the interaxle driveshaft; and a seal 124 received at one end of the receptacle member, and a male component 10 having a yoke 18, 20 and a stem 26 extending from the yoke into the receptacle member, the seal 124 sealing an outer peripheral surface of the stem.
- c. Claims 11, 13 & 15. Fig. 3 shows a drivetrain assembly comprising: a transmission 102; a forward driveshaft 100 connected to the transmission, the forward driveshaft comprising a tubular configurable segment 116 between a female yoke 118 and a receptacle member 110, the length of the configurable segment 116 is part of the overall length of the driveshaft assembly; an axle 104 connected to the forward driveshaft; and a seal 124 received at one end of the receptacle member, and a male component 10 having



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a yoke 18, 20 and a stem 26 extending from the yoke into the receptacle member, the seal 124 sealing an outer peripheral surface of the stem.

10. Claims 1, 3-6, 8-11 & 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith, US 5,634,853.

a. Claims 1 & 3-5. Figs. 1 & 2 shows a configurable driveshaft assembly comprising: a male component 25; a female component 30, 27, 52 in engagement with the male component, the female component comprising a tubular configurable segment 27 between a female yoke 30 and a receptacle member 52, the length of the configurable segment 27 is part of the overall length of the driveshaft assembly; and a seal 57 received at one end of the female component, and the male component having a yoke 25 and a stem 51, 55 extending from the yoke into the female component, the seal 57 sealing an outer peripheral surface 55 of the stem.

b. Claims 6 & 8-10. Figs. 1 & 2 shows a drivetrain assembly comprising: first axle 11; an interaxle driveshaft 10 connected to the first axle, the interaxle driveshaft comprising a tubular configurable segment 27 between a female yoke 30 and a receptacle member 52, the length of the configurable segment 27 is part of the overall length of the driveshaft assembly; a second axle 34 connected to the interaxle driveshaft; and a seal 57 received at one end of the receptacle member, and a male component having a yoke 25 and a stem 51, 55 extending from the yoke into the receptacle member, the seal 57 sealing an outer peripheral surface 55 of the stem.



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- c. Claims 11 & 13-15. Fig. 3 shows a drivetrain assembly comprising: a transmission 11; a forward driveshaft 10 connected to the transmission, the forward driveshaft comprising a tubular configurable segment 27 between a female yoke 30 and a receptacle member 52, the length of the configurable segment 57 is part of the overall length of the driveshaft assembly; an axle 34 connected to the forward driveshaft; and a seal 57 received at one end of the receptacle member, and a male component having a yoke 25 and a stem 51, 55 extending from the yoke into the receptacle member, the seal 57 sealing an outer peripheral surface 55 of the stem.
- d. Claims 16-18. Fig. 1 shows that both ends of the configurable segment 27 are welded to the outer peripheral surfaces of the female yoke 30 and the receptacle member 52 respectively. Fig. 2 shows that in such a welded connection, the end of the configurable segment is beveled.

#### *Response to Arguments*

11. Applicant's arguments filed December 21, 2004 have been fully considered but they are not persuasive. Applicant argues that neither Mangas nor Smith anticipates the claimed invention because neither reference expressly discloses the product-by-process limitation, "said configurable segment being selected from a plurality of optional different length configurable segments". However, the argument is unpersuasive because the patentability of a product (i.e. a driveshaft assembly) does not depend on its method of production (i.e. selecting from a plurality of optional different length configurable segments). *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See also MPEP § 2113.



*Conclusion*

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Binda whose telephone number is (703) 305-2869. The examiner can normally be reached on M-F 9:30 am to 7:00 pm with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Binda  
Primary Examiner  
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